

SENATE BILL 635

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R4

2003 Regular Session
3r2186
CF 3r1719

By: **Senator Forehand**

Introduced and read first time: February 10, 2003

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws - Motor Vehicle Franchise Agreements**

3 FOR the purpose of prohibiting a motor vehicle manufacturer, distributor, or factory
4 branch from entering into a certain agreement establishing or relocating under
5 certain conditions a new motor vehicle dealer within a relevant market area
6 where the same line make is represented; providing for a certain hearing to
7 determine if good cause exists for refusing the establishment or relocation of a
8 new motor vehicle; requiring the Administrator to consider certain
9 circumstances in determining whether good cause exists; providing that a
10 manufacturer, distributor, or factory branch has a certain right of first refusal in
11 the proposed transfer of ownership interest in a dealership; prohibiting a
12 manufacturer from disapproving a claim for compensation under certain
13 circumstances; defining a certain term; and generally relating to motor vehicle
14 franchise agreements.

15 BY adding to

16 Article - Transportation
17 Section 15-209.1 and 15-211(j)
18 Annotated Code of Maryland
19 (2002 Replacement Volume)

20 BY repealing and reenacting, with amendments,

21 Article - Transportation
22 Section 15-212
23 Annotated Code of Maryland
24 (2002 Replacement Volume)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

1 **Article - Transportation**

2 15-209.1.

3 (A) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN THIS SECTION,
4 "RELEVANT MARKET AREA" MEANS:

5 (I) IN A COUNTY WITH A POPULATION GREATER THAN 150,000, THE
6 AREA WITHIN A RADIUS OF 6 MILES OF THE INTENDED SITE OF THE PROPOSED OR
7 RELOCATED DEALER; AND

8 (II) IN A COUNTY WITH A POPULATION OF 150,000 OR LESS, THE
9 AREA WITHIN A RADIUS OF 10 MILES OF THE INTENDED SITE OF THE PROPOSED OR
10 RELOCATED DEALER, OR THE COUNTY LINE, WHICHEVER IS CLOSER TO THE
11 INTENDED SITE.

12 (2) THE RADIUS SHALL BE DETERMINED BY MEASURING THE DISTANCE
13 BETWEEN THE NEAREST SURVEYED BOUNDARY LINE OF THE EXISTING NEW MOTOR
14 VEHICLE DEALER'S PRINCIPAL PLACE OF BUSINESS AND THE NEAREST SURVEYED
15 BOUNDARY LINE OF THE PROPOSED OR RELOCATED NEW MOTOR VEHICLE DEALER'S
16 PRINCIPAL PLACE OF BUSINESS.

17 (B) THIS SECTION DOES NOT APPLY TO:

18 (1) THE REOPENING IN A RELEVANT MARKET AREA OF A DEALERSHIP
19 THAT HAS BEEN CLOSED FOR LESS THAN 1 YEAR; OR

20 (2) THE RELOCATION OF A DEALERSHIP TO A SITE THAT IS LESS THAN 5
21 MILES FROM THE EXISTING LOCATION.

22 (C) NOTWITHSTANDING ANY FRANCHISE AGREEMENT, A MANUFACTURER,
23 DISTRIBUTOR, OR FACTORY BRANCH MAY NOT ENTER INTO AN AGREEMENT
24 ESTABLISHING OR RELOCATING A NEW MOTOR VEHICLE DEALER WITHIN A
25 RELEVANT MARKET AREA WHERE THE SAME LINE MAKE IS REPRESENTED UNLESS:

26 (1) THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH
27 NOTIFIES EACH NEW MOTOR VEHICLE DEALER OF THE SAME LINE MAKE IN THE
28 RELEVANT MARKET AREA OF THE PROPOSED ESTABLISHMENT OR RELOCATION; AND

29 (2) (I) A PROTEST IS NOT FILED UNDER SUBSECTION (D) OF THIS
30 SECTION; OR

31 (II) THE ADMINISTRATION DETERMINES, IN ACCORDANCE WITH
32 SUBSECTION (E) OF THIS SECTION, THAT GOOD CAUSE DOES NOT EXIST TO PROHIBIT
33 THE ESTABLISHMENT OR RELOCATION.

34 (D) IF A NEW MOTOR VEHICLE DEALER RECEIVES NOTICE THAT A
35 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH INTENDS TO ESTABLISH AN
36 ADDITIONAL DEALER OR TO RELOCATE AN EXISTING DEALER WITHIN THE
37 RELEVANT MARKET AREA, THE DEALER MAY REQUEST AND SHALL BE GRANTED A

1 HEARING UNDER TITLE 12, SUBTITLE 2 OF THIS ARTICLE, TO DETERMINE IF GOOD
2 CAUSE EXISTS FOR REFUSING THE ESTABLISHMENT OR RELOCATION, WITHIN 30
3 DAYS AFTER:

4 (1) RECEIVING NOTICE REQUIRED UNDER SUBSECTION (C)(1) OF THIS
5 SECTION; OR

6 (2) THE END OF ANY APPEAL PROCEDURE PROVIDED BY THE
7 MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH.

8 (E) IN DETERMINING WHETHER GOOD CAUSE EXISTS FOR PROHIBITING THE
9 ESTABLISHMENT OR RELOCATION OF AN ADDITIONAL FRANCHISE FOR THE SAME
10 LINE MAKE IN A RELEVANT MARKET AREA, THE ADMINISTRATOR SHALL CONSIDER
11 THE EXISTING CIRCUMSTANCES, INCLUDING:

12 (1) THE PERMANENCY OF THE INVESTMENT;

13 (2) THE EFFECT ON THE RETAIL NEW MOTOR VEHICLE BUSINESS AND
14 THE CONSUMING PUBLIC IN THE RELEVANT MARKET AREA;

15 (3) WHETHER AN ADDITIONAL FRANCHISE IS INJURIOUS OR
16 BENEFICIAL TO THE PUBLIC WELFARE;

17 (4) WHETHER THE NEW MOTOR VEHICLE DEALERS OF THE SAME LINE
18 MAKE IN THAT RELEVANT MARKET AREA ARE PROVIDING ADEQUATE COMPETITION
19 AND CONVENIENT CONSUMER CARE FOR THE MOTOR VEHICLES OF THAT LINE MAKE
20 IN THE MARKET AREA, INCLUDING ADEQUATE MOTOR VEHICLE SALES AND
21 QUALIFIED SERVICE PERSONNEL;

22 (5) WHETHER THE ESTABLISHMENT OR RELOCATION OF THE NEW
23 MOTOR VEHICLE DEALER WOULD PROMOTE COMPETITION;

24 (6) THE GROWTH OR DECLINE OF THE POPULATION AND THE NUMBER
25 OF NEW MOTOR VEHICLE REGISTRATIONS IN THE RELEVANT MARKET AREA; AND

26 (7) THE EFFECT ON THE RELOCATING DEALER OF A DENIAL OF ITS
27 RELOCATION INTO THE RELEVANT MARKET AREA.

28 15-211.

29 (J) (1) IF AN OWNER, PARTNER, OR STOCKHOLDER OF A DEALERSHIP
30 PROPOSES TO TRANSFER MORE THAN 50% OF THE OWNERSHIP INTEREST IN A
31 DEALERSHIP, THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH SHALL
32 HAVE A RIGHT OF FIRST REFUSAL TO ACQUIRE THE OWNERSHIP INTEREST IF:

33 (I) THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH
34 NOTIFIES THE OWNER, PARTNER, OR STOCKHOLDER IN WRITING OF INTENT TO
35 EXERCISE A RIGHT OF FIRST REFUSAL WITHIN 60 DAYS OF RECEIPT OF:

36 1. THE COMPLETED APPLICATION FORMS;

1 THE PROPOSED TRANSFEREE IN NEGOTIATING AND IMPLEMENTING THE CONTRACT
2 FOR THE PROPOSED TRANSFER BEFORE THE MANUFACTURER'S, DISTRIBUTOR'S, OR
3 FACTORY BRANCH'S NOTICE OF INTENT TO EXERCISE A RIGHT OF FIRST REFUSAL.

4 (2) THE MANUFACTURER, DISTRIBUTOR, OR FACTORY BRANCH IS NOT
5 REQUIRED TO PAY THE PROPOSED TRANSFEREE'S EXPENSES UNLESS THE OWNER,
6 PARTNER, OR STOCKHOLDER OF THE DEALERSHIP SUBMITS OR CAUSES TO BE
7 SUBMITTED AN ACCOUNTING OF THE EXPENSES WITHIN 20 DAYS OF RECEIPT OF
8 THE MANUFACTURER'S, DISTRIBUTOR'S, OR FACTORY BRANCH'S WRITTEN REQUEST
9 FOR AN EXPENSE ACCOUNTING.

10 15-212.

11 (a) In this section, "motor home" means a motor vehicle that:

12 (1) Is designed to provide temporary living quarters, built into as an
13 integral part of, or permanently attached to, a self-propelled motor vehicle chassis or
14 van; and

15 (2) Contains permanently installed independent life support systems
16 which provide at least four of the following facilities:

17 (i) Cooking;

18 (ii) Refrigeration or ice box;

19 (iii) Self-contained toilet;

20 (iv) Heating, air-conditioning, or both;

21 (v) A potable water supply system including a faucet and sink;

22 (vi) Separate 110-125 volt electrical power supply; or

23 (vii) An LP gas supply.

24 (b) In addition to the other grounds specified in Subtitle 1 of this title for
25 refusal, suspension, or revocation of a license, the Administration may refuse to grant
26 a license under this subtitle to any person and may suspend, revoke, or refuse to
27 renew the license of any person if it finds that the person has:

28 (1) Made any material misrepresentation in transferring a vehicle or
29 truck component part to a dealer or distributor;

30 (2) Failed to comply with any written warranty agreement; or

31 (3) Failed to reasonably compensate any franchised dealer who does
32 work under:

33 (i) The vehicle preparation and delivery obligations of the dealer;

34 or

1 (ii) Any outstanding express or implied new vehicle or truck
2 component parts warranty.

3 (c) (1) The following factors, as they exist in the city or community in which
4 the dealer is doing business, shall be included among those considered in determining
5 under subsection (b)(3) of this section whether a dealer has been reasonably
6 compensated:

7 (i) The compensation being paid by other licensees to their dealers;

8 (ii) The prevailing wage rate being paid by these dealers; and

9 (iii) The prevailing labor rate being charged by these dealers.

10 (2) Notwithstanding paragraph (1) of this subsection and except as
11 provided in paragraph (3) of this subsection, a licensee may not compensate its
12 dealers for work performed under any warranty under subsection (b)(3)(ii) of this
13 section in an amount that is less than the average amount charged by the dealer to
14 retail customers for nonwarranty work of like kind during the preceding 12 months as
15 long as this amount is reasonable.

16 (3) The provisions of paragraph (2) of this subsection do not apply to
17 travel trailers or parts of systems, fixtures, appliances, furnishings, accessories, and
18 features of motor homes that are not manufactured by the manufacturer of the motor
19 home as a part of the unit.

20 (4) (i) A claim filed under this section by a dealer with a manufacturer
21 or distributor shall be:

22 1. In the manner and form prescribed by the manufacturer
23 or distributor; and

24 2. Approved or disapproved within 30 days of receipt.

25 (ii) A claim not approved or disapproved within 30 days of receipt
26 shall be deemed approved.

27 (iii) Payment of or credit issued on a claim filed under this section
28 shall be made within 30 days of approval.

29 (5) A MANUFACTURER MAY NOT DISAPPROVE A CLAIM:

30 (I) IF THE DEALER RECEIVED PREAUTHORIZATION FOR THE
31 CLAIM FROM THE MANUFACTURER OR THE MANUFACTURER'S REPRESENTATIVE; OR

32 (II) BECAUSE OF THE DEALER'S FAILURE TO COMPLY WITH A
33 CLAIM PROCESSING REQUIREMENT THAT DOES NOT RESULT IN A MATERIAL
34 DEFECT.

35 [(5)] (6) (i) If a claim filed under this section is shown by the
36 manufacturer or distributor to be false or unsubstantiated, the manufacturer or

1 distributor may charge back the claim within 1 year from the date the claim was paid
2 or credit issued.

3 (ii) This paragraph does not limit the right of a manufacturer or
4 distributor to:

- 5 1. Conduct an audit of any claim filed under this section; or
- 6 2. Charge back for any claim that is proven to be fraudulent.

7 (iii) An audit under this paragraph shall be conducted according to
8 generally accepted accounting principles.

9 (d) As to any person licensed under this subtitle, instead of or in addition to
10 revocation, suspension, or nonrenewal of a license under this section, the
11 Administrator:

12 (1) May order the licensee to pay a fine not exceeding \$50,000 for each
13 violation of this subtitle; and

14 (2) May order the licensee to compensate any person for financial injury
15 or other damage suffered as a result of the violation.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2003.